

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MC 95/2016**

**[2018] SCSC 564**

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**FINANCIAL INTELLIGENCE UNIT**

Applicant

versus

- 1. CONTACT LENSES LIMITED**
- 2. JOHN DREYER**
- 3. DONNA DREYER**
- 4. MAPLE LIMITED**

Respondents

**In re the Proceeds of Crime (Civil Confiscation) Act 2008**

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Heard: 6 December 2017 (Submissions), 14 May 2018 (Further Submissions).

Counsel: Mrs. Lansinglu Rongmei for Applicant

Mr. Rene Durup for Respondent

Delivered: 19 June 2018

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**JUDGMENT**

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**M. TWOMEY, CJ**

**Background**

[1] The Applicant is a statutory body and its application is brought by way of notice of motion and supported by an affidavit first sworn by Mr. Finbarr O’Leary, then Deputy

Director of the Applicant and a further amended affidavit sworn by Jan Celliers, Assistant Superintendent of Police, in charge of the Assets Recovery Unit and holding the post of Deputy Director of the Financial Investigation Unit (FIU).

- [2] The First Respondent is a Seychelles International Business Company incorporated on 21 December 2005. The Second Respondent is a businessman with an address in Vancouver, British Columbia, Canada, the Third Respondent is the wife of the Second Respondent and the Fourth Respondent is a Seychellois company, number 86348-1 with a registered address at Room 306, Victoria House, Victoria, Mahé, Seychelles.
- [3] The Applicant is seeking an interlocutory order pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (hereinafter POCA) prohibiting the Respondents or any person who has notice of the order from disposing of or dealing with or diminishing the specified property. It is also seeking a receivership order pursuant to section 8 of POCA.
- [4] The specified property referred to is a Sunseeker Motor Yacht, “MOJO” owned by the Second Respondent and Apartment P28 A15 at Eden Island, Seychelles registered in the name of the Fourth Respondent with beneficial interests therein by the Second and Third Respondents.
- [5] Initially, there were other specified property, namely monies in accounts held with Barclays Bank Seychelles (USD37, 997.94 held in USD account number 038 8992964, GBP 313,032.17 held in GBP account number 038 7601732, EUR 49,961.34 held in EUR account numbers 038 8992972 and 038 7620591) which had been subject to freezing orders by this Court. These were released on 16 August 2017 after the amendments to the POCA in July 2017 which redefined property as not including “bank accounts” (see section 2 of the Proceeds of Crime (Civil Confiscation) (Amendment) Act 2017).
- [6] In terms of understanding this matter, the following submissions of the Applicant are pertinent: The belief evidence of Mr. Jan Celliers is that the First Respondent is associated with tax fraud whereby as a Seychellois International Business company it carried on business in the UK, did not register for VAT in the UK, committing VAT

fraud and diverting substantial sums of money to or for the benefit of the Second, Third and Fourth Respondents.

### **The Applicant's Statutory Beliefs**

[7] In particular, the Applicant's case as made out of the statutory beliefs in the affidavit of Mr. Celliers can be summarised as follows, that :

1. The First Respondent opened four bank accounts (as specified in Paragraph 5 above) with Barclays Bank (Seychelles) Ltd. The Second and Third Respondents holding Canadian passport number PC17446 and British passport 209479029 respectively, signed the account opening documents in their capacity as shareholders, beneficial owners, authorised signatories of and contact persons for the First Respondent. The Second Respondent's passport was subsequently replaced with a British passport numbered 209810384. The Second and Third Respondents provided their common residential address as 4 The Avenue, Sneyd Park, Bristol, BS 91PA, UK and the First Respondent's operating and correspondence address was disclosed as Unit 7, The Laurels, Cribbs Causeway Centre, Cribbs Causeway, Bristol BS10 7TT, England.
2. At the time of the First Respondent's incorporation on 21 December 2005 two share certificates containing 25,000 shares of USD1 each were issued in favour of the Second and Third Respondents. On 10 June 2010 the Second and Third Respondents transferred their shares to POS Holdings Ltd and POS Services Ltd. Subsequently, on 30 August 2011, POS Holdings Ltd and POS Services Ltd. transferred the totality of their shares to Transgeo Holdings Ltd and on 19 June 2013, the latter transferred the same to the Second Respondent. The result is that the Second Respondent now appears to be the sole shareholder of the First Respondent.
3. Further, upon the incorporation of the First Respondent in Seychelles in 2005, Equity Management Inc. with a registered address at Egmont Street, Kingstown, St. Vincent and Grenadines was appointed sole director. On 10 June 2010, POS Service Ltd of Suite 204 and 205, Victoria Building, Victoria,

Mahé, Seychelles became the new director of the First Respondent and acquired half its shares. Subsequently on 30 August 2011, Carlyle Executives Ltd. was appointed as the new director of the company and acquired POS's shares.

4. The Second Respondent in the course of correspondence with the Applicant attempted to establish that he had been the sole director of the company since 9 June 2013. It is the Applicant's belief that the transfers of shares and directorships are indicative of the extreme steps taken by the Second Respondent to conceal his involvement with the First Respondent and distance himself from tax liability in the UK.
5. In order to expedite its investigation and pursuant to its statutory remit and in accordance with Section 10(8) of AMLA, the Applicant, on 1 August 2014, issued statutory information requests to the residential address of the Second and Third Respondents as disclosed to the bank requesting information from the First Respondent. These were returned as not capable of being delivered at the addresses given.
6. The same letter was then issued to Sterling as the current registered agent of the First Respondent in Seychelles. The First Respondent contacted the Applicant on 19 August 2014 stating it needed more time to provide the information requested. As a result, on 30 September 2014 an unsigned and undated document purporting to be a response to the statutory information request was received by the FIU.
7. The First Respondent appointed an attorney in Seychelles who forwarded a response to the statutory request on 13 January 2015 by e-mail, followed by a hard copy of the same. In March 2015, a large amount of documentation in support of this response was also forwarded to the Applicant. This documentation however did not address the concerns raised in the original statutory information requests.

8. A further request to the company's attorney was forwarded to the First Respondent's attorney on 17 September 2015 including the specific information sought and not provided. The attorney requested further periods of time to comply with the request which was granted by the Applicant. This expired in November 2015 but the Applicant nevertheless received a response from the First Respondent in January 2016.
9. Of the bank accounts operated by the First Respondent with Barclays Bank, very substantial sums of money passed through the bank accounts, namely: USD 7.4 million, GBP 540, 440 and EUR 387,213 paid in; and USD 7.4 million, GBP 227,407 and EUR 337,252 paid out (Exhibit FOLM 5). It would appear from the accounts that only a portion of the total turnover of the First Respondent passed through the account as the statement showing the trading year 1 November 2012 to 31 October 2013 alone shows a turnover of € 12,131,130.
10. Further, the main remitter to these bank accounts is a company named Contactlenses, presumably the first Respondent, holding account number 401424-0148896 with HSBC in the UK with the main beneficiaries of the outwards transfers being a company named Fulfilment Logistics (more than USD 3 million and approximately GBP 189,595) and the Second Respondent (approximately USD 2 million, GBP 27,000 and EUR 30,000).
11. A perusal of the accounts in Barclays Bank, Seychelles operated by the First Respondent shows a distinct and unusual pattern on the USD account whereby the First Respondent moved very large lump sums from the UK to Seychelles followed shortly thereafter by the same funds transferred out to the UK in smaller transactions to a number of beneficiaries including the Second Respondent.
12. Such activity does not reflect the purported activity of the First Respondent, that is, "of direct to consumer supply of contact lenses via the internet". It appears also that the First Respondent is operating in the UK and channelling

funds into its Seychelles accounts, pretending that it is not liable to VAT and tax in the UK.

- 13.** A Seychellois IBC is precluded from carrying on business in Seychelles. Yet during the trading year 2012 to 2013 according to information supplied by the First Respondent it had a business turnover of € 12,131,130 and a gross profit of €3,944,969 approximately. Its failure to register and account for VAT has resulted in a VAT tax fraud in the UK amounting to €789,000 approximately in that year alone.
- 14.** The Second Respondent furnished two tax returns paying tax in the UK and suggests he may be domiciled in Canada for some of the years, yet he has produced no tax returns from Canada. It is also noted that the USD 1.9 million, Euro 27,000 and GBP 30,000 does not appear on his returns.
- 15.** No explanation is given by the Respondent as to the nature of transfers from Contactlenses in the UK to it in Seychelles apart from his averment that these were “intercompany transfers” nor whether there were more than one company called Contactlenses. In any case, this explanation contradicts the Second Respondent’s assertion that the UK account of Contactlenses is held in the name of the IBC (the First Respondent) in Seychelles.
- 16.** Further, it appears that Contact Lenses UK changed its name to Celcian Ltd but is still linked to the Second Respondent. The Second and Third Respondents have also been unable to provide an explanation if the shares in Contactlenses issued to them were purchased for cash or other consideration and to provide supporting documentation of the same.
- 17.** Other misleading information was supplied on behalf of the First and Second Respondents relating to a company named Stratta. Again two similar named companies appear both in the UK (now dissolved) and as a Seychellois IBC. The former’s directors were the Third Respondent and one Jade Mark Lambert. The latter’s directors were the Second and Third Respondents and

the company a 50% shareholder in the Fourth Respondent which is the owner of Apartment P28A15 at Eden Island.

- 18.** The Second Respondent transferred money from the First Respondent to Yacht Chandlers Pty Ltd for the purchase of a luxury Sunseeker motor yacht, part of the specified property, and had the same transferred into his personal name. This amounts to both tax fraud and money laundering.
- 19.** With regard to the other items of the specified property, namely the apartment at Eden Island, this was purchased for US\$700,000 by the Fourth Respondent whose directors are the Second and Third Respondents and shareholders are the Second, Third Respondents, and Stratta Distribution Ltd, whose shares are held by the Second and Third Respondents. The source of the money for this purchase was according to the Second Respondent the equity release of GD£350, 000 on property in the UK. However, no evidence of this averment has been provided apart from a mortgage confirmation from HSBC showing repayments of £3,200 monthly with no satisfactory explanation of the source of these repayments.

### **The Respondents' evidence**

- [8]** On 3 October 2017, John Dreyer in his personal capacity and as the representative of the First Respondent and the Fourth Respondent swore an Affidavit in reply to that of Mr. Celliers.
- [9]** The averments in the affidavit are to the effect that:
  - 1.** He qualified as an Optometrist in 1980 and worked hard in that field for 25 years specialising in contact lenses and disease detection. His wife, the Third Respondent trained as psychiatric nurse. They saw opportunities on the internet and in 2004 launched an internet contact lenses site offering ease of access and reduced prices to the public buying on line. The business developed from scratch and developed into the international contact lens business he has today.

2. He travelled with the Third Respondent to Seychelles on holiday in 2005 and decided to buy an apartment at Eden Island. They lived there for five years and moved the Contactlenses business to Seychelles (emphasis added).
3. The First Respondent's source of income is from himself personally and from his operation of an online contact lens retail business.
4. The First Respondent has five bank accounts with Barclays Bank Seychelles as detailed in the Applicant's affidavit.
5. After having been contacted by the Bank that they could no longer provide it with a service, it received communications from the Applicant and sent a consolidated response on 12 January 2015 with supporting documentation showing invoices and documents illustrating good faith trading between the First Respondent and two of the worlds' largest contact lens manufacturers.
6. On 14 September 2015 it was asked for further information, which it eventually supplied. Further affidavits between the Applicant and the company ensued.
7. It denies that the specified properties are derived from criminal conduct or breach the AMLA or POCA.
8. British Revenue did make queries regarding the company and whether it should be taxed by but have not taken any legal action against any of the Respondents.
9. The Second Respondent denies taking extreme steps to conceal his involvement with the First Respondent but avers that Carlyle Executives Ltd was appointed to provide directorship services to the First Respondent.



- 10.** The First Respondent not only traded in the UK but also in many countries but its tax residence is Seychelles. Although a Seychellois IBC cannot carry on business in Seychelles it is not precluded by law to carry on business outside Seychelles from Seychelles. Its principal place of business, management and permanent establishment is in Seychelles solely. Hence it committed no tax offence in the UK as it was tax domiciled and resident in Seychelles (emphasis added).
- 11.** The reason why the bank account mentioned an address in UK is because the second Respondent had previously been staying there and wanted to receive directly the bank statements.
- 12.** It confirmed its bank account with HSBC, which remains unfrozen and transfers from there to Seychelles were intercompany transfers. The transfer of business from Contactlenses (UK) Ltd. to Contactlenses Ltd (that is, the Seychellois IBC was a tax planning strategy taking advantage of the tax legislation in Seychelles.
- 13.** Unpaid issued shares is neither uncommon nor illegal.
- 14.** Similarly, there is nothing extraordinary in using the same name Stratta in a Seychelles IBC whilst availing of the tax legislation in Seychelles.
- 15.** Purchasing the yacht Mojo from the First Respondent's funds does not prove tax fraud by the Second Respondent. It only has to be reflected in the company's accounting statements and it could also not commit tax fraud as it is tax domiciled in Seychelles and availing of the tax legislation of Seychelles meant it had not tax liability.
- 16.** The Applicant does not explain the allegations that the mortgage repayments were the benefit of criminal conduct.
- 17.** The transfer of USD 280,000 by the First Respondent is normal and common with IBCs as the company belongs to the beneficial owner, that is, the Second Respondent.

**18.** The purchase of the apartment at Eden Island was from a loan from HSBC and is not proceeds from crime.

**[10]** There is no supporting documentation of the averments made but an affidavit deposed by one Bobby Brantley of Sterling Trust is also submitted.

**[11]** In it he avers that:

- 1.** He knows the Second and Third Respondents personally. The First Respondent is a company-registered with Sterling Trust, a corporate service provider which he represents in his capacity as director.
- 2.** He is director of five other different Seychellois companies and holds nine different financial services licences, and is the chief executive officer of Trop X (Seychelles ) Limited, Seychelles Securities Exchange.
- 3.** He has a Master's in Business Administration and is a member of the International Tax Planners Association and a member of the Society of Trust and Estate Practitioners. He is currently the Vice Chair of the Seychelles Financial Services Marketing Committee.
- 4.** He has considerable experience and knowledge of the laws relative to the Financial Services Authority including the International Business Companies Act as well as practical experience in the field of advising "third parties on various multi-jurisdictional structures including potential tax issues as regards matters of residency of the entities within these structures."
- 5.** It is common in the financial services industry for corporate service providers to provide nominee shareholders and directorship services for a client wishing to set up an IBC in Seychelles.
- 6.** There is no time limit in the Act for the allotted shares to be paid up and not uncommon for them to be unpaid until a call is made on the shares.

7. IBCs are incorporated in Seychelles as part of the tax planning strategy of persons.
8. A Seychellois IBC is resident in Seychelles for tax purposes and it is only if the IBC establishes a permanent establishment in another country that it acquires a second residence. This would then make the IBC a dual resident for tax purposes.
9. In the present matter no permanent establishment has been created in any country outside Seychelles.

### **The applicable law**

[12] Section 4 of POCA provides in relevant part that:

*“(1) Where, on an inter partes application to Court, in that behalf by the applicant, it appears to the Court, on evidence, including evidence admissible by virtue of section 9, tendered by the applicant, that —*

*(a) a person is in possession or control of —*

*(i) specified property and that the property constitutes, directly or indirectly, benefit from criminal conduct; or*

*(ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct; and*

*(b) the value of the property or the total value of the property referred to in sub-paragraphs (i) and (ii) of paragraph (a) is not less than R50,000,*

*the Court shall make an interlocutory order prohibiting the person specified in the order or any other person having notice of the making of the order from disposing of or otherwise dealing with the whole or, any part of the property, or diminishing its value, unless, it is shown to the*

satisfaction of the Court, on evidence tendered by the respondent or any other person, that —

- (i) the particular property does not constitute, directly or indirectly, benefit from criminal conduct and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct; or
- (ii) the total value of all the property to which the order would relate is less than R50,000:

*Provided that the Court shall not make the order if it is satisfied that there would be a risk of injustice to any person (the onus of establishing which shall be on that person), and the Court shall not decline to make the order in whole or in part to the extent that there appears to be knowledge or negligence of the person seeking to establish injustice, as to whether the property was as described in subsection (1) (a) when becoming involved with the property.”(Emphasis added)*

- [13]** The phrase “benefit from criminal conduct” is defined in section 2 of POCA as the “meaning set out in the Anti-Money Laundering Act, 2006.” Section 3 of AMLA provides in relevant part:

*“Benefit from criminal conduct” means any property obtained or received at any time (whether before or after the passing of this Act) by, or as a result of, or in connection with the commission of criminal conduct.”*

This provision was amended on 7 September 2017 by the AMLA

Amendment Act 2017 (Act 16 of 2017) as is explained infra.

- [14]** Section 9 of POCA provides the definition of “evidence” admissible under section 4(1) supra as follows:

*“(1) Where the Director or Deputy Director states in proceedings under section 3 or 4 on affidavit or, if the Court so permits or directs, in oral evidence, that he believes, that —*

*(a) the respondent is in possession or control of specified property and that the property constitutes, directly or indirectly, benefit from criminal conduct; or*

*(b) the respondent is in possession or control of specified property and that the property was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct; and*

*(c) the value of the property or as the case may be the total value of the property referred to in both paragraphs (a) and (b) is not less than R50, 000,*

*then, if the Court is satisfied that there are reasonable grounds for the belief aforesaid, the statement shall be evidence of the matters referred to in paragraph (a) or in paragraph (b) or in both paragraphs (a) and (b), as may be appropriate, and of the value of the property.*

*(2) The applicant shall not make an application under section 3 or 4 or submit evidence of his belief described in this section, except after reasonable enquiries and investigations and on the basis of credible and reliable information that he has reasonable grounds for suspecting —*

*(a) the respondent is in possession or control of specified property and that the property constitutes, directly or indirectly, benefit from criminal conduct; or*

*(b) the respondent is in possession or control of specified property and that the property was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct, and that the value of the property or as the case may be the total value of the property referred to in subsection (1) (a) and (b) is not less than R50, 000” (emphasis added).*

[15] The courts in Seychelles have established in previous cases, namely *FIU v Mares* (2011) SLR 405, *Financial Intelligence Unit v Sentry Global Securities Ltd & Ors* (2012) SLR 331, and *Financial Intelligence Unit v Cyber Space Ltd* (2013) SLR 97 that the provisions above should be interpreted to mean :

1. “...that once the applicant provides the Court with *prima facie* evidence that is, reasonable grounds for his belief in compliance with section 9(1) in terms of his application under section 4(1) of POCCCA, the evidential burden shifts to the respondent to show on a balance of probability that the property is not the proceeds of crime...” (*Mares supra*)
2. “...All that is necessary is “a reasonable belief” that the property has been obtained or derived from criminal conduct by the designated officer of the FIU. That belief pertains to the designated officer and hence involves a subjective element. It is therefore only *prima facie* evidence or belief evidence. No criminal offence need be proved, nor *mens rea* be shown...If the FIU relies on belief evidence under section 9 the court has to examine the grounds for the belief and if it satisfied that there are reasonable grounds for the belief it should grant the order. There are appropriate and serious protections for the respondents as at different stages they are permitted to adduce evidence to show the Court that the property does not constitute benefit from criminal conduct. Their burden in this endeavour is that “on a balance of probabilities.” In other words, once the applicant establishes his belief that the property is the proceeds of crime, the burden of proof shifts to the respondent to show that it is not. Hence, unless the court doubts the belief of the officer of the FIU which is reasonably made he cannot refuse the order. (*Sentry supra*)

## Discussion

[16] I have examined the evidence against these legal propositions. It is the FIU’s officers’ belief that the funds used to purchase the specified property are derived from criminal

conduct. The criminal conduct is the predicate offence of tax fraud or tax evasion. The plank of the FIU's belief evidence is that the First Respondent as a Seychellois IBC cannot do business in Seychelles, that it is trading in the UK and has paid neither VAT nor other taxes in the UK and that the money in the bank accounts in Seychelles and the money transferred from the UK to purchase the specified property is therefore derived from that criminal conduct.

**[17]** In view of the provisions of section 9 of POCA, the Respondents have to demonstrate on a balance of probability (but note *infra* paragraph 33) that the specified property does not constitute benefit from the tax fraud or evasion alleged.

**[18]** The First Respondent does not deny not paying taxes in the UK but avers that it does not do so because it is not resident in the UK but solely domiciled and resident in Seychelles and "carries on business outside Seychelles from Seychelles" (see John Dreyer's affidavit dated 4 October 2017, paragraph 35 *supra* ). In its answer to the statutory request from the FIU, received by the FIU on 30 September 2014 (see Exhibit FOLM3), the following answers to the questions posed by the Applicant are provided:

*Q.4 + Q5 Particularise fully and vouch the business activities of the company; insofar as the company engages with any other person by way of subsidiary, holding or associating company, partners and consultants, particularise fully and vouch the structure in question, furnish copies of any agreements and state and vouch all payments made over the past three years:*

*Answer Contactlenses Ltd is a direct to consumer replacement contact lens supplier...Contactlenses Ltd operates wholly on the internet through various country specific "contactlenses" domain names...*

*Question 6 If not specified in the reply of number 4 above, detail each state and jurisdiction where the company carries out its business activities*

*Answer "Contactlenses Ltd" is a totally online company with completely outsourced functions. There is no single state or jurisdiction where the company operates from...*

*Question 8 State where the company is domiciled for tax purposes and furnish certified copies of all tax returns since the formation of the company.*

*Answer Contactlenses Ltd is registered in Seychelles. It is operated internationally and there are no tax returns filled.*

*Question 9 State if the company is registered for Valued Added Tax or any comparable tax in any jurisdiction;*

*Answer No.*

*Question 10 Furnish and vouch details of all employees of the company...*

*Answer Contactlenses Ltd has no employees*

- [19] Bobby Brantley’s averment in his affidavit in support of the Respondents’ assertion on this issue is to the effect that the First Respondent has no “permanent establishment” in any country outside Seychelles. He gives other opinions in respect of the foreign tax residency rules and the legislation of Seychelles. This court views these opinions with circumspection as Mr. Brantley is neither a taxation nor a legal expert and the Respondents did not seek to admit his evidence as that of an expert in the field.
- [20] It is my understanding that the UK Contactlenses company transferred its business operations to the Contactlenses Seychellois IBC to take advantage of what it describes as tax incentives prescribed in the laws of Seychelles, that is, not to pay any taxes in Seychelles or anywhere else in the world.

### **The significance of other Seychellois legislation and issues arising**

- [21] In assessing whether the Respondents have committed a predicate crime or breached any provisions of Seychellois law, I take notice of section 5 of the International Business Companies Act (IBC Act) which provides that:

*“(1) For the purposes of this Act, an International Business Company is a Company that does not -*



*(a) carry on business in Seychelles;”*

[22] I also note that section 2 (1) of the Business Tax Act defines “resident person” as *inter alia*:

*(b) an entity —*

*(i) incorporated, formed, organised, or otherwise established in Seychelles; or*

*(ii) managed and controlled in Seychelles; ...”*

[23] Business tax is imposed on income derived by a business from sources in Seychelles. Section 5 of the Business Tax Act in respect of sources of income provides that :

*“(1) An amount derived by a resident person in carrying on a business is derived from sources in Seychelles except to the extent that it is attributable to a business carried on through a permanent establishment of the person outside Seychelles.*

*(2) An amount derived by a non-resident person in carrying on a business is derived from sources in Seychelles to the extent that it is attributable to a business carried on through a permanent establishment of the person in Seychelles.*

*(3) Notwithstanding subsections (1) and (2), the following amounts are derived from sources in Seychelles —*

*(a) a fee for services performed in Seychelles;”*

[24] Two questions arise from these provisions: (1) whether an IBC can transact business from Seychelles for activities outside Seychelles and not breach Section 5(1) (a) of the IBC Act and (2) whether an IBC is resident in Seychelles for tax purposes when it transacts business from Seychelles.

[25] The Respondents categorically aver that that their only permanent establishment is Seychelles.

[26] As its preamble indicates, the IBC Act was enacted to:

*“consolidate and modernise the law relating to the International Business Companies in line with the changes in the international field”* and matters connected.

[27] While this preamble suggests that it may be adapted to address modern business issues, the IBC Act does not directly address how electronic commercial activities should be regulated. Indeed, as attested by various OECD and UN publications, the proper regulation of electronic commerce (“e-commerce”) is increasingly a subject of concern at the intersection of tax, anti-money laundering, and proceeds of crime regulations.

[28] In this context at the instance of the court and to further clarify the matter, this Court asked the parties concerned to provide expert evidence to answer the issues raised above. Mr. Steve Fanny for the Financial Services Authority testified that an IBC can provide directorship services and other limited services and not fall foul of the IBC Act. In the present case, ContactLenses was operating in a type of vacuum and was engaging in *regulatory arbitrage*, in other words it was conducting business or creating services in certain locations that were outside the purview of regulators. Although they were operating in Seychelles they were deriving income from outside Seychelles. In his view they were exploiting a legal loophole.

[29] Mrs. Maria Woodcock, the Director for Taxpayers Services at Seychelles Revenue Commission, stated that under the Business Tax Act a business can only be taxed if its source of income is within Seychelles. Taxes can only be imposed for business transacted on the territory of Seychelles. She stated that a company transacting business should be paying taxes somewhere. She added that that there were no provisions in place for online business activities. She confirmed that that was a serious loophole under current legislation. I could not obtain any clear evidence as to whether or not the First Respondent was indeed resident in Seychelles.

[30] It is clear from the evidence adduced in this case and the views of the experts that the First Respondent has structured its business activities namely its online activities to avoid the application of national laws.

- [31] I note further and in particular that the definition of criminal conduct in the POCA is that as defined in section 3 of the Anti-Money Laundering Act. The latter was amended in 2017 to redefine criminal conduct and to exclude from its definition “an act or omission against any law of another country”; by the deletion of the standard or proof applicable to decide whether property is the benefit of criminal conduct; and by the exclusion of tax evasion, tax non-compliance, or other tax related offences “except if a request has been received by the Central Authority” in relation to the Mutual Assistance Act.
- [32] In this context, I note that no evidence of assistance from the UK or other authorities was adduced by the Applicant in this case. I also note that the provisions of POCA were amended on 3 July 2017 (POCA Amendment Act 2017, Act 10 of 2017) to add a new section 26 to permit actions commenced before the amendment to proceed under the provisions of POCA 2008
- [33] I wish to point out however, that the recent amendments to both AMLA and POCA create an internal and unworkable contradictory regime within the anti-money laundering legislation. The fact that the standard of proof is now uncertain does not guide the Court in any way in coming to a conclusion on whether certain activities amount to money laundering.

## **Decision**

- [34] There are many unexplained contradictions in the Respondent’s evidence. The First Respondent has clearly stated that it “moved the Contactlenses business to Seychelles” and that its principal place of business, management and permanent establishment is in Seychelles solely. Yet, no evidence of these alleged facts were brought by the Respondents. In contradiction to this averment, the Second Respondent also states that it does not carry out business in Seychelles but rather “carries on business outside Seychelles from Seychelles”.
- [35] It is clear to the Court from these averments that the First Respondent is involved in a business over the internet providing contact lens products to its clients and its explanation of how it carries on such business is not convincing. Phone calls and e-mails to and from suppliers and warehouses have physical sites and they must be found in some

jurisdiction. The First Respondent is carrying on business somewhere but not in Seychelles. Those aiding and abetting it are also clearly part of these activities.

- [36]** However, in order for this court to issue a section 4 POCA order it must be satisfied on prima facie evidence (or reasonable belief evidence) that the properties in question constitute directly or indirectly the proceeds of crime. Although such belief evidence is satisfactory, the Respondents have succeeded to prove, supported by the evidence of the FSA and the Revenue Commissioner, that the specified property is not the benefit of criminal conduct.
- [37]** Both the FSA and the Revenue Commission have stated in evidence that the First Respondent is availing of a tax loophole and avoiding (not evading) the payment of tax in Seychelles and possibly elsewhere. Given the circumstances of the case, together with the lack of evidence as to the tax fraud or evasion committed elsewhere and the evidence of the experts that the Respondents were engaging in regulatory arbitrage, I cannot find that the properties in question constitute proceeds of crime.
- [38]** Further, even if the Respondents were to have contravened tax provisions in other jurisdictions, were this case to be brought under the new anti-money laundering provisions, evidence would have had to be adduced as concerns the necessary mutual assistance sought in this respect.
- [39]** In the narrow set of circumstances, the evidence before me, and the applicable law, I cannot make a finding that such tax avoidance amounts to criminal conduct. In the circumstances, I therefore refuse the orders sought and dismiss the application.
- [40]** A copy of this judgement is to be served on the Revenue Commission and the Attorney General to address the tax issues raised in this case.

Signed, dated and delivered at Ile du Port on 19 June 2018.

**M. TWOMEY**

Chief Justice